

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shI

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5 In the Matter of:

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7 GENESIS GLOBAL HOLDCO, LLC,

8

9 Debtor.

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12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 February 9, 2023

17 2:09 PM

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21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Doc. #61 Emergency Motion To Authorize Debtor

2 Genesis Global Holdco, LLC To Consent To Priming Of Lien

4 HEARING re Doc. #62 Motion To Shorten Time / Debtors Motion

5 To Shorten Notice Period And Schedule A Hearing With Respect

6 To Debtors Emergency Motion For Entry Of An Order

7 Authorizing Debtor Genesis Global Holdco, LLC To Consent To

8 Priming Of Lien

25 Transcribed by: Sonya Ledanski Hyde

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13 BY: ANSON B. FRELINGHUYSEN  
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16 ALSO PRESENT TELEPHONICALLY:

17 PHILIP ABELSON  
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19 ERIC C. DAUCHER  
20 ADAM J. GOLDBERG  
21 VINCENT INDELICATO  
22 ZUL JAMAL  
23 KEN LUKASZEWSKI  
24 JACK MASSEY  
25 KYLE MCKUHEN

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8 JEFFREY SAFERSTEIN  
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13 BENJAMIN TEICH  
14 FRANCISCO VAZQUEZ  
15 MEGHANA VUNNAMADALA  
16 MICHAEL WEINBERG  
17 PAUL ARONZON  
18 ARIAM ASMEROM  
19 ERIC ASQUITYH  
20 BRENDON BARNWELL  
21 BRIANNA B. BILTER  
22 SABRINA BREMER  
23 BRIAN BULTHUIS  
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25 TOM CONHEENEY

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2 COURTENAY CULLEN  
3 JARED DERMONT  
4 MICHAEL DIYANNI  
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6 LEIA-LEE DORAN  
7 JAMES V. DREW  
8 LISA FAUCHER  
9 JULIA FOSTER  
10 UDAY GORREPATI  
11 JASON GOTTLIEB  
12 BRANDON HAMMER  
13 MIRANDA HATCH  
14 AUTUMN HIGHSMITH  
15 JEREMY HILL  
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1 MICHAEL LETO  
2 SAMUEL LEVANDER  
3 DAVID LOPEZ  
4 ALEXANDRA LOTTY  
5 AKIKO MATSUDA  
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7 MICHELE MEISES  
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16 PHILIP REIS  
17 ANDREW FELIPE SAENZ  
18 THERESE SCHEUER  
19 JACK SCHICKLER  
20 JOE SCIAMETTA  
21 IAN SILVERBRAND  
22 KUNALKUMAR S. SOMANI  
23 BENJAMIN STEELE  
24 BRIAN STOUT  
25 ANDREW SULLIVAN

1 ANDREW SWIFT

2 BENJAMIN TAYLOR

3 BRIAN TICHENOR

4 ETHAN TROTZ

5 MARIANNA UDEM

6 RICHARD R. WESTON

7 LAUREN WALKER

8 NELSON WANG

9 JACK WESTNER

10 PAUL WIRTZ

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Lane.  
3 Can folks hear me?

4 MS. VANLARE: Good afternoon, Your Honor. Jane  
5 Vanlare, Cleary Gottlieb Steen & Hamilton proposed counsel  
6 to the Debtors. Thank you so much for agreeing to have this  
7 hearing on an emergency basis. We very much appreciate it.  
8 I will --

9 THE COURT: It's my pleasure. No problem at all.  
10 So I guess we'll go ahead with appearances and I just got  
11 yours. Anyone else from your team that you want to  
12 introduce?

13 MS. VANLARE: Yes, Your Honor. I have my  
14 colleague Jack Massey here as well.

15 MR. MASSEY: Good afternoon.

16 THE COURT: All right. Good afternoon to you  
17 both. And let me ask if there's anybody here for the  
18 official committee unsecured creditors.

19 MR. ROSEN: Your Honor, this is Brian Rosen,  
20 counsel to one of the ad hoc groups. It's my understanding  
21 that the official committee at this time has not selected  
22 counsel.

23 THE COURT: All right. Well, thank you very much  
24 for that update. It's a question I had and I've gotten your  
25 appearances. Is there anyone else here for either of the ad

1       hoc groups?

2               MR. FIEDLER: Your Honor, Ross Fiedler of Kirkland  
3       & Ellis on behalf of an ad hoc group. I'm joined on the  
4       phone by my colleague Christopher Marcus.

5               THE COURT: All right. Good afternoon. Anyone  
6       else for the ad hoc groups? All right. Anyone here for the  
7       United States Trustee's office?

8               MR. ZIPES: Your Honor, Greg Zipes with the U.S.  
9       Trustee's office.

10              THE COURT: All right. Good afternoon. I wasn't  
11      sure if there's anyone here from any Gemini entity.

12              MR. FRELINGHUYSEN: Good afternoon, Your Honor.  
13      Anson B. Frelinghuysen, Hughes Hubbard & Reed with my  
14      colleague Jeff Margolin as well for Gemini Trust Company,  
15      LLC.

16              THE COURT: All right. Good afternoon. Anyone  
17      here for DCG? All right. And is there anyone here for  
18      Cashcloud? All right. Any other appearances from anyone  
19      who has not yet chimed in? All right. Hearing no further  
20      appearances, I'll turn it over to Debtors' counsel to walk  
21      us through. I have read the motion and -- supporting the  
22      declaration and have it all including the order so take it  
23      away, counsel.

24              MS. VANLARE: Thank you, Your Honor. I'm going to  
25      pass the virtual podium to my colleague Mr. Massey.

1 MR. MASSEY: Thanks. Good afternoon, Your Honor.  
2 Can you hear me okay?

3 THE COURT: I can hear you just fine. Thanks.

4 MR. MASSEY: Great. For the record again, Jack  
5 Massey, Cleary Gottlieb Steen & Hamilton, proposed counsel  
6 to the Debtors. Again, thank you so much for hearing us on  
7 short notice and we really appreciate your chambers'  
8 assistance in arranging this hearing on short notice as  
9 well.

10 Your Honor, we're here today --

11 THE COURT: Well, I understand you were probably  
12 quite surprised by the need of this hearing as -- as  
13 surprised as anyone else so that's -- certainly happy to  
14 arrange it and understand that the timing -- involved so  
15 happy to help.

16 MR. MASSEY: That's exactly right. Okay.

17 Well, Your Honor, we're here today on an emergency  
18 motion filed at docket number 61, as you know, seeking this  
19 Court's authorization for Genesis Global Holdco, LLC, which  
20 is one of the Debtors in these cases which I'll call Holdco  
21 for short to provide its consent to a DIP facility for the  
22 benefit of Cashcloud, Inc., which is a debtor in an  
23 unrelated Chapter 11 proceeding where that DIP facility  
24 would have the effect of priming the lien held by Holdco  
25 over assets of Cashcloud.

1 Cashcloud is a Las Vegas-based entity that  
2 operates in the crypto currency space. It is the borrower  
3 under two debt facilities for which Holdco is the lender  
4 with a combine aggregate principle amount of approximately  
5 \$108 million. The first is an unsecured debt facility in  
6 the aggregate principle amount of \$100 million. The second  
7 is a secured debt facility in the aggregate principle amount  
8 of \$7.5 million. Cashcloud's borrowings under the secured  
9 debt facility are secured by a lien on substantially all of  
10 the assets of Cashcloud.

11 Yesterday, February 8th, Cashcloud filed a  
12 bankruptcy petition in the federal bankruptcy court in Las  
13 Vegas. It has sought that court's interim authority to  
14 approve a DIP facility in the amount of \$3 million which we  
15 understand will be followed by a request for borrowings up  
16 to \$5 million on a final basis. It is our understanding  
17 that the financing is critical to Cashcloud's ability to  
18 efficiently reorganize or sell its business under Chapter  
19 11.

20 The proposed Cashcloud DIP would grant to the DIP  
21 lender a priming lien on all of the assets of Cashcloud.  
22 This would have the effect of reducing the priority of  
23 Holdco's existing lien and that reduction in priority  
24 requires Holdco's consent. Cashcloud has offered to provide  
25 adequate protection for Holdco's secured claim in exchange

1 for the priming which would come in the form of cash  
2 interest payments in the amount of 6.25 percent per annum of  
3 the outstanding amount under the secured facility and I'll  
4 note this is a more favorable rate than the 5 percent that  
5 was proposed as of the date that we submitted the motion.  
6 And the adequate protection package also includes payment of  
7 Holdco's attorney's fees associated with Cashcloud  
8 proceedings up to \$100,000, replacement liens, super  
9 priority claims by Holdco that would be junior only to the  
10 DIP facility, and other customary stipulations and  
11 provisions.

12 The Debtors believe that the adequate protection  
13 package is reasonable and that providing Holdco's consent to  
14 the DIP facility will maximize the likelihood and the amount  
15 of Holdco's recovery from Cashcloud on both its secured and  
16 unsecured claims.

17 As we note in our papers, we've filed the  
18 emergency motion out of an abundance of caution as we think  
19 that the consent by Holdco to the priming of its lien  
20 arguably constitutes an action in the ordinary course under  
21 Section 363(c) of the bankruptcy code for which no court  
22 approval is required. But in the alternative, we seek  
23 authority to grant Holdco's consent under Section 363(b) of  
24 the bankruptcy code as an extent -- excuse me -- as an  
25 exercise of the Debtors' sound business judgment.

1           Section 363(b) requires that a debtor show a good  
2       business reason for any action taken outside of the ordinary  
3       course of business. The good business reason here is  
4       twofold: First, the Debtors believe that an efficient  
5       reorganization or sale by Cashcloud would not be possible in  
6       the absence of DIP financing, and we believe that a prompt  
7       efficient process in the Cashcloud bankruptcy will maximize  
8       Holdco's recovery under the two outstanding loan facilities.

9           Second, the Debtors believe that the proposed  
10      adequate protection provides reasonable compensation to  
11      Holdco for any diminution in the value of its asset, the  
12      lien, that might result from the -- from its priming or from  
13      the potential exercise of remedies by the DIP lender.  
14      Finally, and also out of an abundance of caution, we seek a  
15      modification of the automatic stay to the extent required to  
16      permit Holdco to consent to the Cashcloud DIP facility.

17           In support of the motion, we have filed a  
18      declaration at docket number 61-1 by Mr. Zul Jamal of  
19      Moelis, proposed investment banker to the Debtors. I'd like  
20      to offer his declaration into evidence now and Mr. Zul is  
21      with us in the virtual courtroom today via Zoom if Your  
22      Honor has any questions for him.

23           THE COURT: All right. Thank you, Mr. Zul, for  
24      being here. Anybody wish to be heard as to the request to  
25      admit his declaration into evidence?

1 MR. ZIPES: Your Honor, Greg Zipes with the U.S.  
2 Trustee's Office. We have no objection. We did have some  
3 questions later on which we don't know would require his  
4 testimony or not, but we just want to reserve our right to  
5 ask questions later on.

6 THE COURT: Yeah, that's fine. So anyone wish to  
7 be heard as to Mr. Zul's declaration being admitted into  
8 evidence? All right. I'm going to receive it into evidence  
9 in support of the motion. Obviously, that doesn't prevent  
10 any party from, if necessary, seeking information from Mr.  
11 Zul, either informally through counsel in the form of  
12 questions and answers which I suspect is how we'll go or if  
13 we actually need something more formal. But it seems --  
14 that seems unlikely but we'll see. So that is admitted into  
15 evidence. So let me hear the rest of the presentation from  
16 Debtors' counsel.

17 (Declaration admitted into evidence)

18 MR. MASSEY: That's all for me, Your Honor. We  
19 have submitted a proposed order attached to the motion as  
20 Exhibit A and I and others from Cleary are happy to answer  
21 any questions that Your Honor or others may have about the  
22 proposed relief.

23 THE COURT: All right. I think the only question  
24 that popped into my head as to the order was whether you  
25 wanted to lay out the specific terms for adequate

1 protection, especially -- I was wondering if they might  
2 change -- they often do -- over time, and it sounds like  
3 their improved and I know the language in the order says  
4 substantially in the form of so I think you're -- of what's  
5 the motion, I think you're covered. I don't know if you  
6 want to say on terms as least as good as what's set forth in  
7 the motion or something else. Did you have a thought?

8 MR. MASSEY: So I will say that I think that we  
9 had anticipated that the terms might change and that the  
10 language that we drafted, the substantially in the form of  
11 language, was intended to cover minor revisions to the  
12 adequate protection package such as the one that I mentioned  
13 earlier. So we think that the proposed language works and  
14 applies to where we expect to land but we'll take Your  
15 Honor's guidance if you think language --

16 THE COURT: Well, that's fine I guess. If you  
17 think you're far enough along in the process that you have  
18 terms and I don't know when their -- Cashcloud's -- hearing  
19 is but obviously, things can also change between the interim  
20 and the final. So am I understanding correctly that your  
21 thought is that it's best say substantially in the form  
22 described in the motion to offer the flexibility that in  
23 case there's some tweaks along the way?

24 MR. MASSEY: That's right, Your Honor.

25 THE COURT: All right. All right. Anything else,

1 counsel, before I canvas the virtual room?

2 MR. MASSEY: Nothing more from me. Thank you.

3 MS. VANLARE: Your Honor, just to -- one other  
4 point. This is Jane Vanlare, Cleary Gottlieb Steen &  
5 Hamilton. Just for the record, it's Mr. Zul Jamal who is  
6 the declarant.

7 THE COURT: Oh, I'm sorry. My -- a thousand  
8 apologies to your declarant for getting his name wrong.  
9 Shame on me and thank you for the correction.

10 MS. VANLARE: Thank you very much, Your Honor.

11 THE COURT: All right. All right. So with that,  
12 let me ask if anyone from the ad hoc committees wishes to be  
13 heard in connection with the pending motion.

14 MR. ROSEN: Your Honor, this is Brian Rosen,  
15 Proskauer Rose. We have nothing to add to this today.

16 THE COURT: All right. Thank you very much.  
17 Anyone else?

18 MR. FIEDLER: Your Honor, Ross Fiedler of Kirkland  
19 & Ellis on behalf of an ad hoc group. We have spoken with  
20 Moelis and Cleary about the relief requested. We understand  
21 the expedited timing here and although we wish we had more  
22 time to review the motion, we defer to the Debtors' business  
23 judgment.

24 We did have questions around the transfer of the  
25 obligations under the secured -- unsecured loans from GGC to

1 Holdco but we are working through those with the Debtors so  
2 we do not have an objection and we will leave it at that.

3 THE COURT: All right. Thank you very much. And  
4 from the United States Trustee's Office?

5 MR. ZIPES: Your Honor, Greg Zipes with the U.S.  
6 Trustee's Office. We are a little surprised that the  
7 committee has not selected professionals right now which  
8 might have been helpful for this hearing, but my office has  
9 had a chance to review the motion. We obviously didn't have  
10 a lot of time on this as with other parties. And we did  
11 have a couple questions which probably can be addressed  
12 informally.

13 We had a chance to look at Cashcloud's initial  
14 declaration and at least according to the declarant in that  
15 case in Las Vegas, there's cash of about \$8.6 million  
16 altogether and, again, we're just going based on the papers  
17 that are filed so we'd just like the Debtors representation  
18 they've looked into this and they're satisfied that there's  
19 sufficient assets with Cashcloud in the event that they're  
20 allowing their lien to be primed.

21 Your Honor, maybe I can just give the two or three  
22 points right now that they can --

23 THE COURT: Yeah. I would go ahead. I'm not  
24 quite sure what you mean by sufficient assets. Are you  
25 talking about the need for the financing which I assume the

1 bankruptcy judge in Nevada will address or are you talking  
2 about where it leaves the Debtor in terms of its position?  
3 I'm assuming that, looking at the big picture, that the  
4 Debtors made a determination that given its business  
5 relationship and what I understand is Cashcloud that this is  
6 the best option available, but they can speak to that. But  
7 I'm just -- let me -- I just want to clarify your question.

8 MR. ZIPES: Your Honor, that's exactly it and I  
9 might not have articulated that in the way that intended to  
10 do that.

11 THE COURT: All right. All right. So what else  
12 was on your mind, Mr. Zipes?

13 MR. ZIPES: Okay. And then this on -- this  
14 ordinary course -- the Debtors' position this is ordinary  
15 course, I don't know that there's sufficient information to  
16 make that finding but I also think that the way they're  
17 arguing this, they would meet the burden of bankruptcy rule  
18 6003 so I don't know that there needs to be a finding in  
19 that regard, and the Debtor can explain whether it does --  
20 they do need a finding that -- it doesn't appear to be  
21 ordinary course but that -- there just might not be enough  
22 information in that regard.

23 And the final point is that, obviously, they need  
24 this today for some reason and we looked at the docket. It  
25 looks like there's a hearing tomorrow maybe in Las Vegas,

1 but --

2 THE COURT: Yes. That's what I was assuming was  
3 the driver for this is that they need to have a position to  
4 go into court with on -- in front of that judge and wanted  
5 to make sure that they had all their -- everything in a row  
6 and set up to be able to do that. That was my assumption.

7 MR. ZIPES: And, Your Honor, I think that's it  
8 from our --

9 THE COURT: All right. So let me ask Debtors'  
10 counsel what you wanted to -- whether you wanted to address  
11 -- how you wanted to address those specific questions. I  
12 seem to have lost Debtors' counsel.

13 MS. VANLARE: We're here, Your Honor.

14 THE COURT: Oh, okay. Great.

15 MS. VANLARE: I think in terms of the first  
16 question, you know, we don't -- we think that this is  
17 appropriate in the ordinary course; however, we did plead in  
18 the -- we did argue in the alternative and we think we do  
19 meet the standard for this being appropriate transaction  
20 given the exercise of the Debtors' business judgment as a  
21 non-ordinary course transaction as well.

22 THE COURT: Let me make it clear. I would agree  
23 with that. I think you have no choice but really to come up  
24 with a position in order to represent yourselves in the  
25 bankruptcy court in Nevada and so you've -- and again, do

1 correct me or confirm this, whatever's appropriate -- but my  
2 understanding is that you're -- you need to do that. You  
3 have done that, and you think that this -- the best course  
4 as a creditor in that bankruptcy.

5 MS. VANLARE: That's exactly right, Your Honor,  
6 and we did -- would appreciate Your Honor's granting us this  
7 motion so that we could be ready for the first day hearing  
8 which is currently scheduled for tomorrow in the Cashcloud  
9 bankruptcy proceeding.

10 THE COURT: All right. All right. And as to any  
11 other issues that Mr. Zipes raised? Anything in particular  
12 that you wanted to address?

13 MS. VANLARE: I believe I've addressed both of his  
14 points, Your Honor, but if not, I'm happy to answer any  
15 other questions that you have or that Mr. Zipes has.

16 THE COURT: All right. Let me turn it over to Mr.  
17 Zipes for anything that he would like to follow up on.

18 MR. ZIPES: Your Honor, we have no further  
19 questions in this regard, and we would just ask that the  
20 order provide that the priming lien be limited to the \$5  
21 million which I think is clear.

22 THE COURT: All right. I think that's the  
23 intention and that if there's any to come back to address  
24 other than to that court that we can cross that bridge when  
25 we come to it, but let me ask Debtors' counsel if I'm

1 reading the tealeaves correctly.

2 MS. VANLARE: That's fine with us, Your Honor.

3 THE COURT: All right. All right. Any other  
4 party that wishes to be heard on the Debtors' current  
5 motion? All right. Hearing no responses, I am happy to  
6 approve the request and I'm basing it on the evidence that's  
7 in record which exists of the declarations that are already  
8 in the record at ECF number 17 and 19 as the declaration of  
9 Mr. Jamal in support of this specific motion.

10 I find that the request satisfies all requirements  
11 of the applicable law and is in fact exactly the kind of  
12 things that judges appreciate. You know, the timing is what  
13 it is, but it's important that there's transparency and --  
14 from folks -- and it's exactly what this motion provides  
15 which is a window into what's going on, what needs to go on  
16 with the Debtor as a Creditor in the Cashcloud bankruptcy in  
17 Nevada. So I am certainly -- understand the timing.

18 I'm more than happy to be here today for this kind  
19 of emergency hearing because, again, we appreciate the  
20 transparency of folks coming saying even if it is arguably  
21 ordinary course, we just want to be clear and get our ducks  
22 in a row. So I find it is an appropriate exercise of the  
23 Debtors' business judgment under all the facts and  
24 circumstances of the case and complies with all aspects of  
25 the bankruptcy code, including 363 that may be applicable

1 either as ordinary course or as a non-ordinary course matter  
2 of the Debtors' sound exercise of business judgment under  
3 363(b) .

4 So with that, my -- I'd ask one question about the  
5 order and I'm satisfied with the answer and the explanation.  
6 I can understand that, as we all know from the other side of  
7 this, that you may be conducting some negotiations. There  
8 may be some tweaks so I don't need you to change that  
9 language, in substantially in the form, discussed in the  
10 motion. And, obviously, the understanding is to the extent  
11 you can get to the best terms you can get, that's what  
12 you're going to do and that's -- I think that goes without  
13 saying.

14 So with that, the motion is approved, and let me  
15 ask Debtors' counsel if there's anything else that we need  
16 to address here this afternoon.

17 MS. VANLARE: Thank you very much, Your Honor.  
18 Nothing else from the Debtors.

19 THE COURT: All right. Thank you. Anything else  
20 from any other party? All right. Hearing no responses,  
21 that's not surprising. I know we will just scheduled for  
22 this hearing for this motion, but thank you very much. I'm  
23 going to so order the record so that even before the order  
24 is entered, the Debtors have authority to take the steps set  
25 forth in the motion, but we will obviously get the order

1 entered promptly.

2 So with that, all of you have a good afternoon.

3 Be well. And I'm sure I'll be talking to you soon. Thank  
4 so much.

5 MS. VANLARE: Thank you, Your Honor.

6 (Whereupon these proceedings were concluded at  
7 2:32 PM)

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I N D E X

RULINGS

Page Line

Motion Approved

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Date: February 13, 2023